

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WEST VIRGINIA UNIVERSITY  
HOSPITALS, INC.,

Plaintiff

v.

ROBERT CASEY, et al.,

Defendants

CIVIL ACTION NO. 1:CV-86-0955

(Judge Rambo)

FILED  
HARRISBURG, PA

JUN 14 1990

ORDER

JOHN J. BERRY, CLERK  
*[Signature]*

As a result of the in-chambers conference conducted on  
June 12, 1990, IT IS HEREBY ORDERED THAT:

(1) the base year for payment of West Virginia  
University Hospitals, Inc.'s allowable medical assistance capital  
costs shall be fiscal year 1988-89 as specified in the January 4,  
1990 letter from David D. Ulsh, Director of Inpatient Programs,  
Bureau of Hospital and Outpatient Programs, Department of Public  
Welfare to Bernard G. Westfall, President, West Virginia University  
Hospitals, Inc.;

(2) the letter referenced in ¶ 1 and State Plan  
Amendment 89-03 as found in Exhibit 3 to West Virginia University  
Hospitals, Inc.'s Second Motion for Enforcement of Judgment shall  
constitute the codification of a revised Medicaid State Plan  
Amendment for reimbursement of capital costs incurred by WVUH in  
the opening of a replacement facility and of a provision that those

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capital reimbursements are to be phased-in to the Commonwealth of Pennsylvania Department of Public Welfare DRG prospective payment rate over the subsequent seven-year period;

(3) before June 30, 1990, the parties' designees and their respective attorneys shall have an in-person conference to discuss the unresolved concerns regarding the current payment methodology which includes those issues raised in the January 4, 1990 Ulsh letter to Westfall, referenced in paragraph 1; the January 18, 1990 letter from Julia Krebs-Markrich, counsel for plaintiff, to Ulsh, and subsequent related communications;

(4) before June 30, 1990, the parties' designees and their respective attorneys shall resolve any questions that remain regarding inadequate and unpaid reimbursements owed to WVUH;


(5) amounts parties agree are due WVUH shall be paid on or before July 31, 1990. Failure to make payment by that deadline shall result in the accrual of interest charges on those unpaid amounts beginning August 1, 1990. These charges shall be calculated at the rate equal to the prime rate as published in the Wall Street Journal on August 1, 1990, and in the event late payments continue into future years, at the prime rate as published in the first issue of the Wall Street Journal for any subsequent year into which late payments may continue, plus one percent, not compounded;

(6) on or before June 20, 1990, defendants shall provide to the court in writing an explanation of

(a) why the adopted amendments at 55 Pa. Code § 1163.65 covering "Payment for out-of-State hospital services" and published in Pennsylvania Bulletin, Vol. 20, No. 22, June 2, 1990, are unchanged from the final regulations on that subject published in volume 14, number 25 of the Pennsylvania Bulletin, dated June 23, 1990, and

(b) how the June 2, 1990, 55 Pa. Code § 1163.65 regulations will apply to WVUH; and

(7) plaintiff's Second Motion for Enforcement of Judgment is deferred.

  
SYLVIA H. RAMBO  
United States District Judge

Dated: June 14, 1990.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE  
P.O. BOX 2675  
HARRISBURG, PENNSYLVANIA 17105-2675

OFFICE OF MEDICAL  
ASSISTANCE PROGRAMS

JAN 04 1990

Mr. Bernard G. Westfall  
President  
West Virginia University Hospitals, Inc.  
Medical Center Drive  
Morgantown, West Virginia 26506-8136

Dear Mr. Westfall:

The Pennsylvania Department of Public Welfare, in compliance with the opinion of U.S. Middle District Court, is revising West Virginia University Hospitals, Inc.'s DRG prospective payment rates effective January 1, 1990, to the amounts shown below. These revised rates reflect several changes in how West Virginia University Hospitals, Inc. is paid under Pennsylvania's DRG prospective payment system.

Hospital Group/Group Rate

West Virginia University Hospitals, Inc. was grouped using the grouping method in place for Pennsylvania hospitals for Fiscal Year 1988-89. Unlike Pennsylvania hospitals, West Virginia University Hospitals, Inc. was afforded special treatment in placing the hospital in a peer group for payment purposes. In response to the court's opinion, West Virginia University Hospitals, Inc. was granted the concession of using all states' Medicaid days in the grouping process, rather than just Pennsylvania Medicaid days as is done for all other hospitals. By providing West Virginia University Hospitals, Inc. the advantage of using all states' Medicaid days and costs related to those days, the hospital barely qualified for placement into Group 1. Under the usual grouping system, West Virginia University Hospitals, Inc. would have qualified to be placed into peer Group 2.

Grouping is a dynamic process. Each time updated information was used and the grouping program rerun, multiple hospitals have changed groups. Therefore, the group assignment of West Virginia University Hospitals, Inc. could change in the future.

The Group 1 hospital rate in effect as of January 1, 1990, is the group rate that was calculated for Fiscal Year 1988-89. The base Group 1 rate for Fiscal Year 1988-89 was \$2,559.99. To this base group rate were added:

- (1) The first year phase-in percentage of including capital as part of the DRG prospective payment rates. The capital add-on percentage for the first year of the phase-in is 0.71% (see "Capital Payments" below).
- (2) The disproportionate share add-on percentage in effect for bracket 3 disproportionate share hospitals for Fiscal Year 1988-89. The bracket 3 disproportionate share add-on percentage is 1.5% (see "Disproportionate Share" below).

Mr. Bernard G. Westfall

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The resulting DRG payment rate, effective January 1, 1990, is \$2,616.84.

#### Capital Payments

West Virginia University Hospitals, Inc. has been afforded special treatment of its capital costs. Rather than the normal base year for capital costs in place for all in-state hospitals (Fiscal Year 1985-86), the base year for payment of West Virginia University Hospitals, Inc.'s allowable medical assistance capital costs will be Fiscal Year 1988-89. In accordance with the Department's prospective capital payment policy, capital payments are phased-in to the DRG prospective payment rates over a seven year period. In response to the opinion of the court, the Department will make a special provision for West Virginia University Hospitals, Inc. and begin the phase-in in Fiscal Year 1989-90. The phase-in will take place over a seven year period.

##### A. Capital Add-On to DRG Group Rate

The percentage of capital added to the DRG prospective payment rate for the first year of the phase-in is 10% of the statewide average percentage of capital to operating costs (7.1%). The resulting percentage (0.71%) is added to the group rate.

##### B. Capital Pass-Through Payments

For the first year of the phase-in of capital payments to the DRG rates, 90% of a hospital's allowable medical assistance capital costs are paid as pass-through payments. Because Fiscal Year 1989-90 will be the first phase-in year for West Virginia University Hospitals, Inc., the hospital's monthly capital pass-through payment was determined by calculating 90% of the hospital's allowable capital costs for the Fiscal Year 1988-89 base year. This amount was then divided by 12 to arrive at a monthly pass-through payment amount for capital.

The monthly capital pass-through payment for West Virginia University Hospitals, Inc. is \$17,722.35.

#### Medical Education Payment

West Virginia University Hospitals, Inc. was afforded special treatment in the payment of medical education costs. In response to the court's opinion, West Virginia University Hospitals, Inc.'s medical education costs will be paid by the Department. The base year for allowable MA medical education costs is Fiscal Year 1984-85. Each year's medical education costs are compared to the inflated base year costs to determine the lesser of these amounts. Payment for medical education costs for West Virginia University Hospitals, Inc. was determined by comparing allowable medical education costs for the Fiscal Years 1984-85, 1985-86, and 1986-87, inflated to comparable years' amounts, and moving the base year to the lesser of these amounts, in this case Fiscal Year 1986-87.

Mr. Bernard G. Westfall

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The allowable base year amount was then inflated to a Fiscal Year 1988-89 amount and divided by 12 to determine the monthly pass-through payment amount.

The monthly medical education pass-through payment for West Virginia University Hospitals, Inc. is \$13,680.56.

#### Disproportionate Share

There are four methods used to determine if a Pennsylvania hospital qualifies for disproportionate share payments. West Virginia University Hospitals, Inc. was afforded special treatment in the determination of its eligibility for disproportionate share payments by using all states' Medicaid days. Only Pennsylvania Medicaid days are employed in the calculation for Pennsylvania hospitals. Final ranking of West Virginia University Hospitals, Inc. based on the federal criteria of the ratio of non-general assistance days to total days resulted in the placement of West Virginia University Hospitals, Inc. in payment bracket 3.

The disproportionate share add-on percentage for West Virginia University Hospitals, Inc. is 1.5%.

#### Cost-to-Charge Ratio

A cost-to-charge ratio was calculated for West Virginia University Hospitals, Inc. from the Fiscal Year 1986-87 cost report data submitted by the hospital. The ratio was calculated by taking the total inpatient costs less total inpatient capital and medical education, and dividing by total charges. The ratio was increased by .71% to reflect the capital add-on percentage paid through the DRG prospective payment system. This is the same calculation that is used to calculate a cost-to-charge ratio for each Pennsylvania hospital.

The cost-to-charge ratio for West Virginia University Hospitals, Inc. is .5097.

#### Retroactivity of Court Order

Because the Third Circuit Court has directed that the effective date of this rate package is January 30, 1989, a calculation of the amount owed to West Virginia University Hospitals, Inc. from January 30, 1989, through December 31, 1989, will be prepared expediently and forwarded to the hospital. The new rates were put on the payment file effective January 1, 1990.

If you wish to appeal the revised DRG payment amounts specified in this letter, you must file your appeal within 30 days from the date of this letter. The appeal must be submitted in writing to the Office of Hearings and Appeals, P. O. Box 2675, Harrisburg, Pennsylvania 17105, and must specifically identify what is being appealed. The notice of appeal will be considered timely filed if it is received by the Office of Hearings and Appeals or post-marked within the specified time period. A copy of the appeal must be sent to

Mr. Bernard G. Westfall

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the Department of Public Welfare, Office of Medical Assistance Programs,  
Bureau of Hospital and Outpatient Programs, Division of Inpatient Programs,  
P. O. Box 8047, Harrisburg, Pennsylvania 17105.

Sincerely,

David D. Ulsh  
Director of Inpatient Programs  
Bureau of Hospital and Outpatient Programs

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OCT 18 1990

DONALD R. BERRY, CLERK  
PER.....  
DEPUTY CLERK

ORDER

AND NOW, this 18 day of October, 1990, IT IS HEREBY  
ORDERED THAT:

1) Defendants shall provide a state plan amendment which shall treat WVUH as an in-state hospital for purposes of determining Pennsylvania's medical assistance reimbursement for acute care general hospital services.

2) Said plan shall further comply with the following principles:

a) In determining the appropriate in-state group and WVUH's eligibility for the disproportionate share adjustment, defendants shall count all medical assistance days reported by WVUH, irrespective of the home state of the medical assistance patient;



b) Reimbursement of WVUH's direct medical education costs shall be paid in accordance with the regulations that apply to in-state acute care general hospitals;

(c) The base year for determining WVUH's Pennsylvania medical assistance capital reimbursement shall be fiscal year 1988-1989, such capital reimbursement to be phased into the defendants' DRG prospective payment rate over the subsequent seven-year period;

(d) The plan shall incorporate this court's holding by order dated June 14, 1990, and the letter by David Ulsh dated January 4, 1990, and shall specifically provide that the state regulation adopted at 55 Pa. Code 1163.65 published in Pennsylvania Bulletin, Vol. 20, No. 22, June 2, 1990, shall not apply to WVUH.

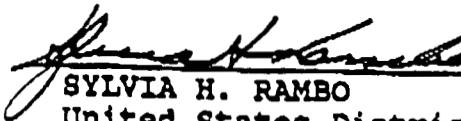
3) Medicaid payments to WVUH shall include such increased rates as may be paid to in-state hospitals from time to time, as a consequence of litigation, in conformity with federal law.

4) This order is no bar to future changes in the payment methodology so long as such changes conform with federal law.

5) Defendants shall comply with paragraphs 1 and 2 of this order on or before November 19, 1990.

6) No later than November 2, 1990, plaintiff shall submit under separate cover a petition for award of counsel fees and supporting documents. Defendants shall respond within ten (10) days of service of the fee petition.

7) Plaintiff's request for an award of interest is deemed redundant in light of this court's order dated June 14, 1990.

  
SYLVIA H. RAMBO  
United States District Judge

Dated: October 18, 1990.